



# **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

**NO. WR-59,552-05**

**EX PARTE RUBEN GUTIERREZ, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS AND MOTION FOR  
STAY OF EXECUTION IN CAUSE NO. 98-CR-1391  
IN THE 107<sup>TH</sup> JUDICIAL DISTRICT COURT  
CAMERON COUNTY**

*Per curiam.*

## **ORDER**

We have before us a subsequent post-conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.<sup>1</sup> We also have a motion for a stay of execution.

In April 1999, a jury convicted Applicant of the offense of capital murder. In May 1999, the jury answered the special issues submitted pursuant to Article 37.071, and the

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<sup>1</sup> Unless otherwise indicated, all references to Articles refer to the Texas Code of Criminal Procedure.

trial court, accordingly, sentenced Applicant to death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Gutierrez v. State*, No. AP-73,462 (Tex. Crim. App. Jan. 16, 2002) (not designated for publication). This Court denied relief on Applicant's initial post-conviction application for a writ of habeas corpus. *Ex parte Gutierrez*, No. WR-59,552-01 (Tex. Crim. App. May 14, 2008) (not designated for publication). And it dismissed Applicant's first subsequent post-conviction application for a writ of habeas corpus. *Ex parte Gutierrez*, No. WR-59,552-02 (Tex. Crim. App. Aug. 24, 2011) (not designated for publication).

The trial court subsequently set Applicant's execution date for October 30, 2019. In a motion for leave to file a petition for a writ of mandamus, Applicant challenged the validity of the execution warrant. This Court stayed Applicant's execution but ultimately dismissed the mandamus action and lifted the stay. *Ex parte Gutierrez*, No. WR-59,552-03 (Tex. Crim. App. Feb. 26, 2020) (not designated for publication).

Shortly after this Court lifted the stay, the trial court set Applicant's execution date for June 16, 2020. In a new motion for leave to file a petition for a writ of mandamus, Applicant challenged the validity of the new execution warrant. Today the Court denied leave to file in that case without written order. *See Ex parte Gutierrez*, No. WR-59,552-04.

On June 8, 2020, Applicant filed in the trial court his second subsequent writ application. In eight claims, Applicant alleges that: the prosecutor made misleading

comments which diminished the jury's sense of responsibility; the State presented false and misleading testimony; the State committed a *Brady* violation by withholding material exculpatory evidence; trial counsel performed deficiently at both phases of trial; new scientific evidence discredits eyewitness testimony presented at trial; other new scientific evidence contradicts evidence presented at trial; and, the Texas death penalty statute cannot be reconciled with the U.S. Supreme Court's recent decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

We have reviewed the application and find that the allegations do not satisfy the requirements of Article 11.071 § 5 or Article 11.073. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claims raised. Art. 11.071 § 5(c). Accordingly, we deny Applicant's motion for a stay of execution.

IT IS SO ORDERED THIS THE 12<sup>th</sup> DAY OF JUNE, 2020.

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